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SUBJECT: EULEX: UN PRIVILEGES AND IMMUNITIES UNRESOLVED; EU  
FARES BETTER WITH GOVERNMENT OF KOSOVO

REF: USEU BRUSSELS 548

Classified By: CDA Christopher W. Murray for reasons 1.4 (b) and (d).

¶1. (C) Summary: The EU's negotiations with the UN over privileges and immunities (Ps and Is) for EULEX personnel remain stalled. The EU has, however, secured the Government of Kosovo's agreement to extend Ps and Is to the mission. EULEX planners, while admitting that deployment under only Government of Kosovo-issued Ps and Is is not ideal, are prepared to move forward on this basis and have received some positive indications that most EU member states would be willing to do so as well. EULEX officials are not optimistic that internal EU institutional objections to the UN's conditions for issuing Ps and Is can be overcome, and they argue that if contributors were to insist on UN Ps and Is for the mission, deployment could be further delayed by weeks. The EU has strongly urged that, if the U.S. agrees that Government of Kosovo (GoK)-issued authorities are sufficient, we work to quickly sign the Participation Agreement for the mission, a move which would send an important political signal and provide further leverage to encourage rapid deployment by other contributors. End Summary.

¶2. (C) In a meeting with USEU PolOffs August 26, EU Civilian Planning and Conduct Capability (CPCC) officials responsible for the EULEX Kosovo mission said that the EU's discussions with the UN concerning privileges and immunities for EULEX personnel remain deadlocked over the UN's insistence that the UN retain the sole authority to waive immunities. Citing the potential for an undesirable precedent that would extend well beyond the specifics of the EULEX mission, and pointing to different, more favorable UN arrangements with NATO/KFOR and the former EU Planning Team in Kosovo, EU Council and legal officials and some member states argue that at a minimum, the EULEX Head of Mission or contributing state should have the right to consult with the UN in a waiver decision. Although admitting the scenario was unlikely, CPCC officials also cited as a concern the potential for negative Russian pressure tactics if the UN retained sole authority to waive Ps and Is for EU personnel.

¶3. (C) As a result of a parallel discussion with the Kosovo government, the EU has received a letter from President Sejdiu granting full privileges and immunities to EULEX personnel. The letter mentions UN Security Council Resolution 1244 in an attempt to help the EU secure the participation of member states who have not yet recognized Kosovo. Our CPCC contacts are in the process of canvassing EU member and third states on the acceptability of the letter

from Sejdiu and have so far received generally positive indications that most could accept this as the basis for mission Ps/Is. According to the EU officials, Spain, which is not planning to participate in the mission, and Cyprus, which has discussed only a very small contribution, are so far the exceptions.

¶4. (C) Recalling previous U.S.-EU conversations where the U.S. side indicated willingness to accept sufficiently robust Ps and Is from either the GoK or the UN, CPCC contacts noted that if the U.S. or other contributors insisted on a UN assurance of privileges and immunities before allowing personnel to deploy, the EULEX deployment process could be further delayed by weeks while they tried to reach agreement with the UN. If the United States was, in fact, prepared to go forward with the original, general Participation Agreement (PA) language on Ps and Is (reftel) with a reference to the agreement between EU and GoK, the EU anticipates that deployment timetables would be unaffected. They assessed that, pending member state agreement of the full text, the EU would be in a position to sign the PA as soon as the end of September. CPCC officials added that the EU still plans to re-engage with the UN on the Ps and Is question later in September, and will look forward to any potential for flexibility in the UN position as a result of upcoming changes in the UN's office of Legal Affairs as well as the Department of Peacekeeping Operations.

¶5. (C) Turning to broader EU-UN Relations, CPCC contacts report that the EU-UN technical agreement signing on August 18 has improved coordination on the ground and boosted morale

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among EULEX personnel. The EU also assesses that the EU's resumed deployment has put additional pressure on UNMIK to quickly and fully implement its reconfiguration process. Interlocutors note that the transfer of buildings and accommodation is underway, and the transfer of assets and equipment should begin soon. EU officials are still in discussions with the UN regarding the specific definition of the "UN umbrella" as well as the details of UNMIK's reconfigured presence, particularly in the North. UNMIK has committed itself to keep police and rule-of-law officials on the ground until EULEX is ready to assume authority in late November. The two sides have not yet agreed a specific date for the transfer.

¶6. (C//NF) Comment: While current thinking in Brussels among many EU and some member state officials is that "bad privileges and immunities are better than no privileges and immunities," they are aware that deploying under GoK authorities is not ideal. Our CPCC interlocutors are particularly concerned that turning over waiver authority to the UN would have implications for future UN-EU relations, as well as for the autonomy of the EULEX mission. Nonetheless, some progress has been made in securing agreement from non-recognizing member states to deploy under the GoK authorities, and CPCC officials assess that building on this progress and proceeding along the GoK Ps and Is track is the most realistic way of getting EULEX fully deployed and functional by late-November. CPCC officials are looking to the United States to soon sign the participation agreement to help set an example and leverage CPCC's internal progress with member states. Signing the PA, with relevant text detailing provisions for U.S. EULEX personnel to be covered by GoK Ps and Is, could help move member states who would otherwise prefer to wait for the resolution of UN Ps and Is before deploying, and would remove another potential excuse for further delays in the EULEX deployment process. End Comment.

MURRAY

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